

MINUTES
ADVISORY COMMITTEE

Monday, March 3, 2014

City Hall, Room 207

5:30 p.m.

Members Present: Ald. Tom DeWane, Ald. Jesse Brunette, Ald. Jerry Wiezbiskie, Ald. Andy Nicholson, Ald. Mark Steuer, Ald. Brian Danzinger (arrived late)

Others Present: Ald. Amy Kocha, Ald. Tim DeWane, Ald. David Boyce, City Attorney Tony Wachewicz, Chief of Staff Andy Rosendahl, IT Manager Mike Hronek, and members of the media.

1. Call to order.

The meeting was called to order by Council President, Tom DeWane at 5:32 pm. All members were present with the exception of Ald. Brian Danzinger, who would be arriving late.

2. Approval of the agenda.

Motion and second were made to approve the agenda. Motion carried.

3. Request by Ald. Kocha to discuss with possible action the Council's legal and ethical issues and expectations of Aldermen who also serve as Brown County Supervisors.

Ald. Kocha stated over the years our taxpayers have been represented by several individuals who were elected as both the alderman and Brown County supervisor, which is permissible under the law. However, she said the reality is that the interests of the city and county are not identical. She believes that in the past decision making for those that occupy both offices has sometimes been rationalized because the boundaries used to be the same and the feeling was that you were essentially representing the same people so it didn't matter how you voted in terms of an issue that involved both the city and the county. She said since this is no longer the case, she wanted to bring this forward for discussion. When the City Council is weighing a decision that involves a strategy to enter into an agreement with the county, she feels there's no way for a member to objectively sit in closed session with the City Council and privately consider the city's options without also having the knowledge taking into consideration the county's interests. She stated over the years there were times in closed session that members who also served on the county board had expressed to Council members why it might be important to change a vote because of what might be happening at the county. She

doesn't feel there is necessarily any malicious intent or intentionally wrongdoing on any alderman's part, but said that she thinks it's difficult to make that separation. She cited examples of the solid waste disposal debate as well as the KI Center and the Room Tax.

She gave the example that if Green Bay came up with a great money saving way of handling solid waste and as a council member you could see that this was a great way of saving money for the city but because of a Tri County agreement on the county side, you might see that as a detriment. She indicated that we currently do not have such an agreement and was simply using this as an example of how an alderman might be torn between his duty to the county and to the city. She stated in her opinion when we have a conflict about what's good for the city or for the county, those issues would require an elected official to abstain from voting in one body or the other and to not sit in closed session in that body in which he would abstain. She feels this is important for all of our Council to be thinking about because if an elected official is required to meet his duty on one board, if he's really required to abstain, then his district is without representation on that issue and she sees this as a problem. She feels it's important for the voters to be aware of that possibility and for the city council to be thinking about that when they are in closed session and when there is an issue that might create some pull for an agreement that involves the city and the county.

Her last comment is that Council members might question her bringing up this issue at the end of her term, but said this is something that has been troubling her for the six years that she has held office and she decided that she wanted this to get discussed before she left office and secondly, she feels there's no better time to bring this forward than when the electorate is anticipating a vote so they can be thinking it through. She said if they're comfortable with it, then it's fine but they should at least be aware that there are issues that need to be raised. Ald. Kocha stated that this concern was expressed to her as she was campaigning two years ago and had several people tell her that they didn't like that. She indicated that she is interested to hear comments from the other Council members as well as from the City's legal counsel.

Ald. DeWane asked City Attorney Tony Wachewicz to comment. Atty. Wachewicz said he believes the legal issue is relatively settled and this has been some of the past discussion and focus. He said there is a county statute that allows a person to essentially serve on both the city and the county side. He said that statute has been amended over the years and said that the legislative history that's out there is purely a legal question and it's relatively clear that a person can hold both offices, which could set up a potential inherent conflict in that regard. He said looking at the local ethical ordinance as well as the state law, there isn't anything that strictly meets a conflict of interest under either of those because those conflicts focus more on an elected official receiving a direct financial

benefit on behalf of themselves or their immediate family, or some private gain that they are trying to abuse or use their office to try to obtain. He said in a sense it falls back on who would be represented and what is your duty as an elected official. This goes back on state general corporate law and the duties that an official whether appointed or elected that represents the city or the county is that they have a duty of loyalty to that organization. He stated they are elected on behalf of the constituents and at the same time they have a duty of loyalty to the organization and to act in good faith in what's their best interests. The question that comes from that is are you acting in that organization's best interests, if you're learning of information from a closed session or a negotiating type of session in one body, which could be used inappropriately. Whether there would be the disclosure of closed session information which could be a specific type of law violation that could be a civil penalty generally speaking you're breaching that duty of loyalty or acting in good faith because you're taking information in one arena and using it to benefit another. That possibility is out there for the potential breach of a duty on the inherent conflict where the interests of two organizations may be clashing or adverse to one another. What is a little unclear is the punishment or penalty or remedy as a result of that and he indicated he doesn't know that the law has a remedy for this. He said it would fall back to looking at the cause of action and the breach of loyalty to the organization that you have been elected to represent what's in their best interests.

Ald. Tom DeWane stated that he does find it curious that Ald. Kocha would bring up this issue when it's election time and said she has that right. He stated he has been in office for eight years and never found that as a responsibility; he found it as a plus. He indicated anything that is brought up in closed session has never been brought forward with the other body and said his constituents have said they appreciate him serving on both the City and the County and said it's been a plus. He said his constituents are confident that he will do his due diligence on each issue and feels that he has. He said he appreciates Ald. Kocha bringing this forward.

Ald. Brunette inquired of Attorney Wachewicz if there are any statute or policy that prohibits state assemblymen or a congress woman or other levels of government serving on the City Council simultaneously. Atty. Wachewicz responded that what it falls back to is the question of compatibility of offices and said what that concept boils down to do you have some kind of oversight or control over the office that would be underneath you. He said there's no statute that would prohibit you from holding both offices and said there's a law that allows you to run for multiple offices at one point. He said there's case law that would prohibit someone from working in the assessor's office, or being a plumbing inspector for the city for example, and running for city Council, and the same would apply on the county side.

Ald. DeWane stated that there are assemblymen that are running and are on the county and plan on keeping both offices. Ald. Brunette stated that one town chairman who was involved with the Towns association was also on the County Board. He said his personal opinion is that in 2006 he ran for both city council and the county board and said the districts overlapped at that time and told his constituents that it would be an advantage to run for both. He said some agreed with that and some didn't. He indicated that he lost those elections but served on the county board two years later for four years and with the redistricting, in the last election just ran for city council. He said each candidate needs to tell constituents when they knock on doors why they should or shouldn't run for both offices. He indicated his biggest issue with this is just because someone is a city council member or county board supervisor, it shouldn't prevent them from serving their community in another aspect. He summed up by stating he doesn't want to be the one to tell someone they cannot run for both offices and said each elected official needs to use their discretion in abstaining from voting on an issue and there is an election held every two years.

Ald. Steuer stated he is aware that a city or county employee cannot run for council or county board. He inquired if Council members are considered city employees, with Ald. DeWane said they are elected officials. Atty. Wachewicz said a part-time employee might qualify but it boils down to what the city looks at in the table of organization, salary, benefits and how the city defines an employee. Ald. Steuer feels council members are both elected officials and city employees with Atty. Wachewicz stating at the end of the day they are elected officials. Ald. Steuer confirmed that a Council member could recuse themselves from going into closed session, with Atty. Wachewicz stating that is correct. Ald. Steuer further commented that if aldermanic and supervisory districts were the same, he feels this would be less of an issue.

Ald. Nicholson inquired about a city employee running for the county board and asked if one wouldn't be influenced by the county? Atty. Wachewicz responded he thought this would be o.k. and said he didn't see the correlation there. He further stated that the supervisor has no control over the city budget, what they're going to determine for pay, what the rules and policies are. Ald. Nicholson inquired if the city employee was a supervisor or administrator and said he feels it might get sticky. Ald. Kocha clarified that Ald. Nicholson was talking about a city supervisor running for county board and he responded that he was just thinking of something out of the blue.

Ald. Wiezbiskie stated he can appreciate the fact that there is an issue and said however, if something is broken, what is the fix? He said he's witnessed in closed session an alderman who is also a county board supervisor leaning toward what the county wanted and said we're all human and didn't know how we could draw a line on that. He said

these offices are supposed to be non-partisan and said he has seen aldermen running on a party ticket. He said we're non-partisan because we represent all the people; democrats, republicans and everyone else. He's doesn't feel it's right for an alderman to show a card as a registered democrat and this should be addressed if it happens. He summarized by saying he doesn't know what the fix is and said he doesn't feel it's a big problem with the current council. He said if you're talking about contracts between the city and county, he wouldn't want to be put in that place and has only run on the city side and added ultimately the voters elect whom they want to represent them. He said years ago, it was more the norm that people ran for dual office. He said the timing for this discussion is good, with the election coming up. He indicated this is the first Advisory Committee in many years.

Ald. Danzinger arrived at this time.

Ald. DeWane stated he has only had a few Advisory Committee meetings since he has been Council president because this Council has been diligent with getting the work done at the committee level and there hasn't been a need for Advisory Committee to meet.

Ald. Kocha stated that she is not looking for a motion or decision of any kind but brought this forward to raise awareness that there is this possibility and we are relying on individuals not to breach and confidence to the Council or the Board.

Ald. Danzinger apologized for being tardy and said when he looks at this question he sees the potential for a conflict of interest but questioned how we dictate what roles professionally or in a civic role would constitute being a direct conflict of interest or simply a matter of judgment. He stated we have had decisions that would impact the downtown area specifically where people are employed we have people that work for financial institutions or other businesses that are in direct competition with other work that we've done. He said he understands some of the concern where it comes to making decisions in one party over another without making the best overall decisions. He said he finds it murky to define what creates that separation because we have the ability for people to make that personal judgment to recuse themselves from any discussion. He believes there is a process where as a council they can request or make note that an individual should recuse themselves. He gave the example of voting on a business development that might have a direct level of competition against an individual who is sitting on the council, he clarified that the council has the ability to raise the question of that person having a potential conflict of interest? Atty. Wachewicz said he believes there is a process where they could do that. Ald. Danzinger believes that they have the right to at least make note that there might be a potential conflict of interest and by noting that it would make that individual aware of the others awareness and would take it upon

themselves to recuse themselves from the discussion. He added that if Council can demonstrate a definitive conflict of interest in a decision that is made, he clarified that they can call that person out with an ethics violation. Atty. Wachewicz confirmed this as being correct.

He believes the conflict is less about the organizational table but said council are not employees who have control over an individual's reviews or movement within the organization. He said they have influence over the policies that guide what their roles and promotions and pay scale might be. He sees no conflict on the city or county side regarding influencing things on the employee level.

Ald. Steuer inquired if this policy was to change, would it have to be amended at the state level? Atty. Wachewicz responded that this would be the most appropriate way to deal with this and to group up some of the comments and said it's on a case-by-case situation and reiterated that the law states that a person can hold both offices. He said if they are considering amending the statute that would need to be done at the state level. Ald. Steuer asked Ald. DeWane and Ald. Nicholson to comment on Ald. Kocha's example of the KI, solid waste and room tax.

Ald. DeWane said he does not see a conflict of interest, weighs out the issue and makes a decision that he feels in best in the situation. He stated he is intelligent enough to look at the whole picture of what's on the table and make a valid decision. He said most of the members of the county board are represented by their municipality. Ald. Wiezbiskie commented there is an Ethics Board who is the policing body of unethical behavior and said there is a board set up for that reason. Atty. Wachewicz confirmed this as correct. Ald. Danzinger also stated we have mechanisms in place to handle ethical issues and said simply inquiring about something raises the level of awareness.

Motion made by Ald. Wiezbiskie, second by Ald. Danzinger to receive and place on file. Motion carried.

4. Request to approve Public Access Television Policy.

Atty. Wachewicz distributed a copy of the policy that was drafted and said Time Warner Cable had some discussions regarding administering and operating Channel 4 and broadcasting our Council meetings and if we're going to do that, we need a policy to outline what our parameters are to deal with regulations regarding a public access channel. He said he understands that other municipalities also operate and administer their own public access channel and said this is to formalize that document and process. Ald. DeWane inquired who brought this forward? Mike Hronek responded that he was in discussions with the Mayor's Office and IT Department. M. Hronek said Time Warner

would still own the channel but delegate it to other municipalities to administer and broadcast their own meetings. Ald. DeWane inquired what is wrong with the process we have right now? M. Hronek responded that Time Warner is going to need new infrastructure and they approached the city to take this over programming and broadcasting the channel and said we purchased equipment to be able to do this. He stated the programming equipment cost \$8200. Ald. DeWane inquired if these decisions don't normally come before Council before the purchase is made. M. Hronek responded that it went through Purchasing and was under the \$10,000 threshold and they approved the purchase. Ald. DeWane expressed concern that this was not approved by the Council beforehand and said he would like Time Warner to come and talk to them. M. Hronek stated that each municipality gets a franchise free from Time Warner Cable. Atty. Wachewicz said as a condition of Time Warner's franchise agreement that's operated through the state, they are required to provide public access which is why they broadcast all of these channels.

Ald. Steuer inquired if things are edited from some of the committee meetings on the public channel. M. Hronek said after a certain time, another program comes on but said he believes the entire council meeting is aired. Ald. DeWane said he is aware that in the past, staff has edited the tape before bringing it to Time Warner and removed some portions of the meeting. M. Hronek said their current policy is that no editing would be done and added that maybe a policy was not previously in place. Ald. Nicholson said in the past when there was a heated debate, the televised version broke away to another subject, yet the disk included the entire meeting. He indicated he had several examples of this happening including a debate with Allison Swanson relative to the Protection & Welfare Committee. He said this entire discussion was not aired.

Ald. Steuer agreed that the taxpayers should see the entire happenings at Council meetings. Ald. Wiezbiskie said as a point of order we are getting off the agenda and should put in correspondence to address this issue at another time. He inquired that Time Warner is giving us broadcasting rights free? M. Hronek confirmed. Ald. Wiezbiskie said this issue should come before the full council and the \$8200 was passed by the committee and he doesn't see anything wrong with it. He said he doesn't see much change.

Ald. DeWane said he would have wanted this to come before a committee to see if Council wanted to go this route. He said the under \$10,000 limit was to purchase needed equipment but a change like this is different. Ald. Kocha stated that it never occurred to her that staff would have had to receive Council permission to continue airing the Council meetings. She confirmed with M. Hronek the process and said she has no objection.

Ald. Danzinger said Time Warner doesn't want to go through the work of having to program this channel. He said this is much the same as radio stations having to give up some of their broadcasting time for public announcements. He said it's now the responsibility of the city to do the programming now for Channel 4 to air our council meetings. He said either we do the programming now or no one does it? Mike Hronek said legally Time Warner would have to continue the programming but they are not interested in doing that. He said they are trying to cut costs and believes we would not have the capability to have streaming and live broadcasts. It also gives us more opportunity to put in public announcements and small broadcast shows that would be specific to the city as well as making sure we get the allotted timeslots for our meetings. It also facilitates the capability of broadcasting committee meetings if we wish. He understands Ald. DeWane's concern with purchasing the equipment but thinks that's a different issue with the policy. He said staff has been given the responsibility of continuing our broadcasts and the \$8200 expenditure was necessary to do that and since Time Warner is not interested in continuing our programming, we will not have the level of flexibility that we want as a city. He thinks the ability for us to manage this is a benefit as a council and as a community.

Ald. DeWane inquired if Time Warner would give us the extra to broadcast other things? Mike Hronek responded that they have to give us the time and we can put on anything we like and Channel 4 is only programmed for DePere and Green Bay. He said we have to keep showing Appleton, Neenah and Menasha but we can dictate the time slots.

Motion made by Ald. Steuer, second by Ald. Wiezbiskie to approve the Public Access Television Policy. Motion carried.

Discussion: Ald. Nicholson inquired if this item will be reported out in two weeks. Atty. Wachewicz responded that the plan was to report out both items at tomorrow's council meeting.

Ald. Steuer motioned and Ald. DeWane seconded to hold the report to Council on item #4 for two weeks until the next Council meeting. Motion carried.

There being no further business, a motion to adjourn was made by Ald. Steuer and seconded by Ald. Wiezbiskie. Motion carried.

Respectfully submitted,
Mary Haupt, Recording Secretary